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Commission Action:

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**APPEAL STAFF REPORT  
SUBSTANTIAL ISSUE DETERMINATION**

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Appeal Number:	<b>A-3-STC-99-081, Neary Lagoon Skate Park</b>
Applicant:	Department of Parks and Recreation, City of Santa Cruz
Appellant:	Carol Long
Local Government:	City of Santa Cruz
Local Decision:	Approval with conditions, October 15, 1999 (Coastal Development Permit), Amendment to Neary Lagoon Park Master Plan.
Project Location:	Neary Lagoon Park and Wildlife Refuge (near intersection of Bay and California Streets), Santa Cruz, Santa Cruz County, (APN 004-321-06).
Project Description:	Construction of 14,600 square-foot Skate Park with adjoining non-skateable pathways, landscaping, viewing areas, fencing, and the addition of three parking spaces to an existing parking area.
File Documents:	City of Santa Cruz Local Coastal Program; Neary Lagoon Management Plan; City of Santa Cruz Skate Park Project - Neary Lagoon Park Draft and Final EIR, Technical Memorandum, " <i>Prediction Methodology and Recent Noise Survey Results, Neary Lagoon Skate Track EIR</i> ," by Wilson, Ihrig & Associates, Inc., December 1999, and Technical Memorandum, " <i>Skateboard Noise Characterization at Santa Rosa Skate Park</i> ," November 23, 1999.
Staff recommendation:	<b>No Substantial Issue</b>

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**EXECUTIVE SUMMARY**

Staff recommends that the Commission, after public hearing, determine that **no substantial issue** exists with respect to the grounds on which the appeal has been filed, and as a result, that the Commission decline to take coastal development permit jurisdiction over this project. The City proposes to construct a 14,600 square foot Skate Park facility. The project includes viewing areas, non-skateable walkways, fencing, landscaping, and the addition of three parking spaces to an

existing parking area (project plans attached as Exhibit A). Additionally, the project as conditioned by the City includes a six-foot, solid wood, sound barrier fence with a ten-foot vegetative buffer between the project site and adjacent riparian corridor.

The project is located within Neary Lagoon Park and Wildlife Refuge in the City of Santa Cruz, Santa Cruz County. Neary Lagoon is a natural habitat island within a sea of urban development. The lagoon is located less than 1-mile southwest of downtown Santa Cruz and is approximately 0.25 mile north of the Municipal Pier at Cowell Beach. Urban development surrounding Neary Lagoon consists of single family residences, multiple-unit-housing complexes, while the largest and most prominent development adjacent to the lagoon is a wastewater treatment facility. The treatment facility extends most of the length of Neary Lagoon's southern border and also borders the proposed Skate Park site.

The appellant contends that the project allows development within the required setback from wetlands or stream courses; will adversely impact bird species adjacent to the project site and those inhabiting the remainder of the Neary Lagoon; allows a designated incompatible use; will have negative effects on the aesthetic values of the Neary Lagoon; and will create conflicts between different user groups. These contentions raise no substantial issue because the project, as conditioned by the City: does not include development within the required setback; will not impact bird species near the project site and includes measures to address impacts on the pathways of Neary Lagoon should there be a substantial increase over current impact levels; allows the designated incompatible use of skateboarding only within the confined foot-print of the Skate Park facility and does not change the continued prohibition of the use throughout the remainder of Neary Lagoon; does not adversely impact the aesthetic values of the Neary Lagoon; and has been conditioned to prevent user group conflicts within the vicinity of the project site and contains measures to address any increases in conflicts throughout the remainder of the Neary Lagoon.

## **APPEALABILITY TO THE COMMISSION**

This project is appealable under Section 30603 (a)(1) of the Coastal Act because it is a major public works project within the coastal zone.

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## I. APPELLANT’S CONTENTIONS

The Appellant alleges the project is inconsistent with both the City of Santa Cruz Local Coastal Program and the Commission certified Neary Lagoon Management Plan (a part of the City’s LCP) because the project: (1) allows development within the required setback from wetlands or stream courses; (2) intensifies public use impacts upon wildlife species through increased traffic in the lagoon’s lower terrace; (3) will have an adverse impact upon bird species inhabiting the adjacent riparian area along the upper terrace; (4) allows a designated incompatible use; (5) will have negative affects on the aesthetic values of Neary Lagoon; and (6) will create conflicts between different user groups, namely persons who are handicapped and children playing in the adjacent “tot lot.” (See Exhibit B for full text of appeal)

## II. LOCAL GOVERNMENT ACTION

On October 5, 1999 the Santa Cruz City Council adopted Resolution Numbers NS-24 (534,535,536, and 537) certifying the Final EIR, approving an amendment to the Neary Lagoon Park Master Plan and Coastal Development Permit (with conditions) for the Skate Park project (See Exhibit E for Conditions of Approval).

The Commission received the Final Local Action Notice for the project on October 7, 1999 and the appeal period commenced the next day. One valid appeal was received on 10/22/99 prior to the end of the appeal period. The appeal was filed on October 22, 1999.

Pursuant to Section 30621 of the Coastal Act, an appeal hearing must be set within 49 days from the date an appeal of a locally issued Coastal Development Permit is filed. In accordance with the California Code of Regulations, on October 25 staff requested all relevant documents and materials regarding the subject permit from the City to enable staff to analyze the appeal and

prepare a recommendation as to whether a substantial issue exists. The administrative record for the project was received from the City on November 1, 1999.

After review of the public record, staff subsequently requested additional information beyond that which was provided in order to clarify issues raised in the appeal and perform a complete analysis. By December 3, 1999 the City submitted all additional materials requested by staff.

### III. STANDARD OF REVIEW FOR APPEALS

Coastal Act section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because it is a major public works facility in the coastal zone.

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is not located between the nearest public road and the sea and thus, this additional finding need not be made in a *de novo* review in this case.

#### IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

##### **MOTION:**

*I move that the Commission determine that Appeal No. A-3-STC-99-081 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

##### **STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:**

Staff recommends a YES vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

##### **RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:**

*The Commission finds that Appeal No. A-3-STC-99-081 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.*

#### V. RECOMMENDED FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

##### **1. PROJECT DESCRIPTION AND LOCATION**

The City of Santa Cruz proposes to construct a 14,600 square foot Skate Park facility in Management Zone J of Neary Lagoon. The proposed Skate Park would include viewing areas, non-skateable walkways, fencing, landscaping, and the addition of three parking spaces to an existing parking area. The project is designed for use by skateboarders, roller bladers, and roller skaters. Landscaping and fencing would separate the Skate Park site from the immediately adjacent “tot lot” playground and enclose the skating area. Additionally, the project as conditioned by the City includes a six-foot, solid wood, sound barrier fence with a ten-foot vegetative buffer along the northern border of the project site in order to block Skate Park noise from entering into the adjacent Bay Creek/Neary Lagoon riparian area.

All skating surfaces within the Skate Park itself would be constructed of concrete below grade at an elevation of (±) 4.5 feet. No specific design plans for the skating surfaces have been developed at this time, beyond the locally approved site plan delineating the allowable foot print of the actual skating area. The three spaces added to the existing on-site parking area would increase the total on-site amount to ten spaces. Together with four off-site parking spaces the total parking spaces

provided to “tot lot” playground and Skate Park users would be fourteen spaces. A passenger drop-off zone and turn-around pullout would be constructed at the parking lot entrance. Use of the Skate Park will only be permissible during daylight hours.

Automotive as well as other pedestrian oriented modes of travel would be able to access the Skate Park from either Bay or California Streets at the southwestern border of Neary Lagoon. Pedestrian access to the Skate Park from the greater downtown area of Santa Cruz is possible from Blackburn and Chestnut Streets at the northwestern border of Neary Lagoon. Access to the Skate Park from Blackburn and Chestnut Streets requires travel through Neary Lagoon. (See Exhibit A for project plans)

The proposed project is located within Neary Lagoon Park and Wildlife Refuge in the City of Santa Cruz, Santa Cruz County (See Exhibit C for Vicinity Map). Neary Lagoon is less than 1-mile southwest of downtown Santa Cruz and within 0.25 mile north of the Municipal Pier at Cowell Beach. The lagoon is a natural habitat island within a sea of urban development. Urban development surrounding the lagoon consists of single family residences, multiple-unit-housing complexes, while the largest and most prominent development adjacent to the lagoon is a wastewater treatment facility. The treatment facility consists of several large, bulky structures and extends most the length of Neary Lagoon’s southern border and also borders the proposed Skate Park site. A children’s play area or “tot lot” is located opposite the treatment plan from the Skate Park project site. (See Exhibit D for Project Location Map)

Neary Lagoon covers approximately 44 acres and provides a variety of natural habitat areas that include fresh water marsh, open water, and riparian and mixed oak woodland types. These habitat types comprise approximately 75% of the lagoon. The Neary Lagoon Management Plan, a certified portion of the City’s LCP, states that, of the lagoon’s habitats “the riparian forest supports the greatest diversity of native wildlife, but the combination of habitats and their interconnections enhance the attractiveness of the lagoon for many species.” The Plan further states, “the transitional areas between habitat types, ecotones, are as important as the defined biological communities because wildlife often are dependent on more than one community and frequently move between communities.” The lagoon’s natural resources serve as an important resource for both the community of Santa Cruz and visitors to the area. The lagoon has also been recognized as an important area for bird watching and attracts birders from outside the area.

The remaining approximate 25% of Neary Lagoon that does not function as habitat is currently developed with a limited number of recreation amenities. These amenities include the “tot lot” and interpretive signs, and can be found largely throughout Management Zones J and F. Explanation of the Neary Lagoon’s Management Zones is provided below. Zones J and F extend most of the southern extent of the lagoon and also border the wastewater treatment facility. Additional recreation amenities include the pathways and boardwalks that provide access through the natural habitats of the lagoon.

The Neary Lagoon Management Plan separates the lagoon into ten management zones (A through J). The proposed Skate Park occurs within management zone J. Fifteen of the management zones, or approximately 75% of the lagoon, are largely off limits to direct use and are designated as habitat, though pathways and boardwalks provide views to some of these areas. The five

remaining management zones, including zone J, are designated as maintained, recreation, grassland, and ruderal. (See Exhibit F for Management Zone Map)

The lagoon management area consists of an upper and lower terrace, with the overwhelming majority of the management area in the later. Management Zone J comprises the entire upper terrace areas of the Neary Lagoon and overlooks the open water, riparian and oak woodland, and freshwater marsh habitats of the lagoon below. The land use designation of the project site is “Parks” which allows for development of neighborhood, community and regional parklands, as well as other active and passive recreational uses. The zoning designation for the project site is P-K Parks District. The purpose of the parks (PK) District is to designate sites for public parks, and to ensure that there is a compatible relationship between such parks and the surrounding area.

## **2. NEARY LAGOON MANAGEMENT PLAN AS STANDARD OF REVIEW**

### *Purpose and Role in LCP*

The Neary Lagoon Management Plan was approved by the Commission and incorporated into the City of Santa Cruz LCP on August 13, 1992. Excerpted policies of the Neary Lagoon Management Plan are included in the certified City of Santa Cruz LCP, while the management plan provides the full text background and resource inventory for the lagoon. The Plan guides management of the lagoon for its purposes of wildlife values, public use and safety, flood protection, water quality, and mosquito control. Approval of the management plan fulfilled a long standing Commission policy on Neary Lagoon, dating back to requirements to prepare a management plan in the lagoon, as specified in the 1975 coastal permit for constructing recreation improvements (P-1523). The LCP also contains policies directing the preparation of management plans for resources like Neary Lagoon. Section 24.14.080.4c of the LCP also required an approved management plan for Neary Lagoon to enable approval of projects in and adjacent to the lagoon that are found to be consistent with the plan.

The LCP, which contains the excerpted policies of the Neary Lagoon Management Plan, is the standard of review in regards to the issues raised in this appeal.

### *Role of Neary Lagoon Park Master Plan*

Section 24.10.1745 of the Zoning Ordinance requires the City to approve a Park Master Plan or special use permit at the inception of a use in order to establish use and design parameters within the specified park. This requirement has been fulfilled by previous approval of a Park Master Plan by the City that covers the project location in management zone J. The Park Master Plan provides graphic detail of specific recreation and access features, in the form of a site plan, which are to be constructed. In this sense, the Park Master Plan goes beyond that which is provided in the policy language of the Neary Lagoon Management Plan by illustrating specific design features.

Local approval of the project required an amendment to the Neary Lagoon Park Master Plan to change the designated use of the project site from two and one-half tennis courts to a Skate Park.

Although the Park Master Plan provides information, it is not part of the certified LCP, and thus an LCP amendment was not necessary to the amend this plan.

### 3. SUBSTANTIAL ISSUE DETERMINATION

#### A. REQUIRED SETBACK

The appellant alleges that the proposed development does not adhere to the required setback from wetlands and watercourses contained in the LCP policies.

First, policy EQ 4.2.2 states:

*Minimize the impact of development upon riparian and wetland areas through setback requirements of at least 100 feet from the center of a watercourse for riparian areas and 100 feet from a wetland. Include all riparian vegetation within the setback requirements, even if it extends more than 100 feet from the watercourse or if there is no defined watercourse present.*

Policy EQ 4.2.2 requires a 100-foot setback from the centerline of a watercourse and 100 feet from a wetland, all riparian vegetation is to be included within the setback requirements, even if it extends more than 100 feet from the centerline of the watercourse. Contrary to the appellant's allegation, the intent of LCP Policy EQ 4.2.2 is to *include all* riparian vegetation into the protective buffer of the setback of riparian areas and wetlands from urban land uses, and not to use the extent or ending point of such vegetation as a starting point for measuring the setback requirement.

As illustrated in the Commission certified vegetation and land cover map of the Neary Lagoon Management Area (Exhibit G), the proposed project site is outside of the setback required under LCP policy EQ 4.2.2. The proposed Skate Park site is at least one hundred feet from the delineated wetland boundary and at least 275 feet from the open water of the lagoon. The proposed site is also at least 125 feet from the centerline of Bay Creek. The proposed Skate Park site is currently graded and all riparian vegetation has been included into the above setback measurements. Therefore, the Commission finds that the approved project conforms to the setback requirements of LCP policy EQ 4.2.2.

Second, policy EQ 4.2.2.1 states:

*Require that all development within 100 feet of these areas be consistent with the applicable management plan provision under EQ 4.2.1 and L 3.4, if one has been established.*

This policy is not relevant because there has been no violation of the setback. Nonetheless, there is a Management Plan that has been previously established. The Neary Lagoon Management Plan was approved by the Commission and incorporated into the City of Santa Cruz LCP on August 13,



1992. Therefore, the Commission finds that the proposed project is consistent with LCP policy EQ 4.2.2.1.

Third, policy EQ 4.2.2.2 states:

*For Neary Lagoon, provide at least 100-foot buffer between non-recreational land uses (e.g., parking, housing) and the lagoon. Exceptions may be granted for the Secondary Wastewater Treatment Plant (to the limits shown in the Neary Lagoon Management Plan) project provided that mitigation measures as specified in the environmental impact report and management plan concurrently implemented.*

There has been no violation of the setback requirements of this policy. As mentioned above, the project site is at least 275 feet from the open water of the lagoon. Therefore, the Commission finds that the proposed project is consistent with LCP policy EQ 4.2.2.2.

## **B. IMPACTS TO WILDLIFE**

The Appellant alleges that the project will intensify public use impacts upon Neary Lagoon wildlife species through increased skateboard traffic in Neary Lagoon's lower terrace and will also have an adverse impact upon bird species inhabiting the riparian area along the upper terrace adjacent to the project site. The appeal asserts that the impacts at the above locations would occur through both increased incidents of contact between wildlife and people, and also increased noise levels. The appellant cites Neary Lagoon Management goals and policies that address public use impacts to wildlife inhabiting the lagoon, stated in full below:

***“Management Goal WF: Protect and improve opportunities for maintaining and increasing populations of native wildlife at Neary Lagoon.***

***Objective WF-7: Reduce public use impacts of existing operations and conditions on wildlife and minimize public use impacts of future operations and conditions on wildlife.***

***Objective PU-3: Reduce public use impacts on wildlife and people from existing and new design elements in the management area.***

***Action PU-3.2: New trails will be surfaced with materials, such as decomposed granite and gapped wooden boards, that discourage use by roller skates and skateboards to reduce impacts from fast movement or recreation activities that are not compatible with the lagoon's goals of wildlife protection and passive human use. Surfaces will permit wheelchair use.***

***Objective PU-4: Establish, enforce, and explain reasons for restrictions on public access and activities to increase understanding and reduce impacts on wildlife and people.***

***Action PU-4.3: Activities that will be discouraged with reasons explained on signs and as part of interpretive exhibits on signs and as part of interpretive exhibits in the***

*management area will include feeding wildlife and making loud noises that may disturb wildlife and people in or near the management area."*

### *1.1 Upper Terrace*

One issue presented by this allegation is that the intensification of use over that presented in the use of the previously approved tennis courts would have a negative affect on the bird species inhabiting the adjacent riparian corridor through increased contact and noise levels.

### *1.2 Existing Conditions at Upper Terrace*

As discussed above, the proposed project site is located upon the upper terrace of Neary Lagoon, within Management Zone J. Recreational amenities that have been developed to date within Zone J include interpretive signs, concrete walkways, and a children's play area (tot lot). As mentioned, the wastewater treatment plant is also currently developed adjacent to the project site. The subject project site represents the last remaining undeveloped piece of land in Zone J. The City amended the Neary Lagoon Park Master Plan to replace the previously designated two and one-half tennis courts with the Skate Park. As described earlier, this action does not constitute an LCP amendment. There is an existing parking area within the vicinity of the project site to the west. Riparian and mixed oak woodland habitats extend along the northern border of Management Zone J and are approximately ten feet from the project sites entire northern border.

Table 2-7 (p.47) of the Neary Lagoon Management Plan estimates historic recreational use at the proposed Skate Park site. These figures provide an indication of the level of use that would occur if the proposed Skate Park was not constructed, and the tennis courts were installed. The use estimates of Table 2-7 are for three and one-half tennis courts and children's play area. The estimated number users are stated on a monthly basis. (See Exhibit H for Table 2-7) Estimates of Peak use of tennis courts was estimated at 3,000 persons per month, or approximately 300 per day, and peak play area use was estimated at 600 persons per month, or approximately 20 per day.

The technical memorandum by *Wilson, Ihrig & Associates, Inc.*, dated December 3, 1999, states that the existing noise levels within the riparian corridor averages between 44 and 55 dBA, with occasional maximum noise levels between 50 and 70 dBA (See Attached Exhibit I). Only the hours between 9:00 a.m. to 9:00 p.m. are represented in the above existing noise levels. Existing noise level measurements during this time period is appropriate given that the Skate Park is to be a daytime use facility only.

### *1.3 Noise Impacts at Upper Terrace*

Concerning the impacts upon breeding birds and riparian habitat, the Final EIR (FEIR) concludes in part:

*Although the Skate Park will increase the noise level adjacent to the refuge (Neary Lagoon), the noise level generated by the skateboards is not expected to significantly affect breeding birds due to the existing urbanized setting of the project area.*

However, the FEIR did not include any acoustical analysis of the riparian corridor or natural areas of Neary Lagoon supporting this conclusion. In fact, previous acoustical analysis completed for the project only addressed the potential impacts of the Skate Park to nearby residential neighborhoods. The FEIR also did not provide any discussion of the methodology of sampling and data extrapolation used to estimate the expected noise levels.

The FEIR and adopted project did include a noise mitigation measure (NOISE-1 and City condition of approval No. 5) that requires the construction of a six-foot, solid sound fence along the northern project boundary. However, staff was not able to determine from the evidence presented how effective or to what level the sound fence would serve acoustically separate the project site from the riparian area and other natural areas of the lagoon. It is noted that landscaping will also be planted next to the fence in order to further dampen noise levels, enhance visual continuity, and provide additional substrate for birds.

The City has subsequently performed further noise measurements within the adjacent riparian corridor and detailed the methodology of extrapolating noise data at the Skate Park in Santa Rosa to the project site at Neary Lagoon in order to project expected noise levels. (See Exhibit J) Attached are technical memorandums from the project by *Wilson, Ihrig & Associates, Inc.*, *Acoustical Consultants*, dated November 23, 1999 and December 3, 1999.

The December 3, 1999 memorandum by *Wilson, Ihrig & Associates, Inc* details acoustical analysis at three new locations not analyzed in the FEIR, two within the riparian corridor and one at the southern boardwalk entrance (See Exhibit I). These receiver locations are identified in Exhibit I as “Bay Creek,” “Edge of plateau,” and “Pathway” respectively. In addition, the memorandum illustrates existing and predicted noise levels at these locations and explains the methodology used making noise level determinations. The predicted noise levels at the above-mentioned locations, both with and without the sound fence, can be found in attached Exhibit I.

According to the technical memorandum, “*Skateboard Noise Characterization at Santa Rosa Skate Park*,” dated November 23, 1999, predicted noise levels were obtained by sampling at the Santa Rosa Skate Park on Monday, 1 September 1997, Labor Day Holiday (See Exhibit J). The memorandum provides a complete explanation of the sampling methodology and site characteristics. The memorandum states that, “the number of users within the fenced perimeter of the skate track did not exceed approximately 15-20 at any time during the survey period.” Furthermore, sound measurement sampling was done for a period of approximately sixty-three minutes.

The December 3, 1999 memorandum by *Wilson, Ihrig & Associates, Inc* states that the predicted noise levels within the riparian corridor, at the “Bay Creek” receiver location, from only the Skate Park itself, with the sound fence (FEIR mitigation measure NOISE-1, condition of approval No. 5), includes a range in typical maximum noise levels between 28 and 30 dBA. While predicted typical maximum levels at the edge of the riparian corridor, at the “Edge of Plateau” receiver

location, directly adjacent to the proposed site, ranges between 41 and 43 dBA. Lastly, predicted noise levels at the boardwalk entrance, at the “Pathway” receiver location, with the sound fence includes a range in typical maximums between 28 and 30 dBA. The December 3, 1999 memorandum thoroughly explains how the predictions were estimated and addresses the effectiveness of the sound fence in reducing noise levels originating from the proposed site.

The December 3, 1999 memorandum by *Wilson, Ihrig & Associates* concludes, “that the predicted levels are for the skate track noise only (emphasis added) and do not represent the level of noise after construction of the Skate Park, which will remain the same as they are today.” The memorandum further concludes, “that operation of the Skate Park will result in no noise impact to the present environment and virtually no audibility of skate noise will hold.” Furthermore, a letter from *Wilson, Ihrig & Associates, Inc.* dated December 14, 1999, states that, “the new noise source, i.e. the Skate Park, introduced into this environment will be masked by the ambient noise such that skate activity will not affect the existing noise level” (See Exhibit K for 12/14/99 letter).

Overall, within respect to wildlife, City’s biological consultant, Bryan M. Mori, concludes that, “the birds that do utilize the trees along the edge of the plateau are primarily common urban species, which are continually subjected to a variety of urban noises and are expected to adapt to noises from the Skate Park.” In addition, the consultant’s opinion is that, “no obligate or special status bird species are nesting along the thin, marginal habitat along the plateau, and the highest quality riparian habitat is along the bottom of the drainage (Bay Creek), where the predicted sound levels are below or within existing noise levels” (See Exhibit L for Bryan M. Mori letter).

#### *1.4 Impacts from Increased Contact at Upper Terrace*

In addition to the issue of increased noise levels, the appeal also asserts that the intensification of use at the project site will lead to increased incidents of contact between humans and wildlife species at the riparian corridor. The premise is that some wildlife species may perceive humans as a threat when in close proximity to one another, and that this contact will negatively disrupt their normal daily cycles.

Based upon the estimates of historic use within Management Zone J and the estimated number of skate park users it is clear that Skate Park would intensify the number of users at this location over what has historically occurred. During peak season, which is expected to occur on summer weekends, 500 Skate Park users per day are expected, or approximately 15,000 skaters per month. In the low season, the estimated number of visitors per day is approximately 200 users, or about 6,000 per month. This represents a substantial increase over previously estimated of peak use of tennis courts of 3,000 persons per month, or approximately 300 per day, and peak play area use estimates of 600 persons per month, or approximately 20 per day. Nevertheless, the issue is whether or not there will be an impact from increased incidents of visual contact.

As mentioned above FEIR mitigation measure NOISE-1 and condition of approval No. 5 requires the construction of a 6-foot high sound fence along the northeast edge or the terrace (along the drainage corridor). The sound fence will be built out of solid wood, with no openings or gaps within it or between the fence and the ground. The wood fence will extend from the south-eastern point of the proposed Skate Park facility towards the northeast and should envelope the Skate Park

facility in such a way that the line of sight from any point along the concrete Skate Park facility to the backyards of residences along California Street and at Shelter Lagoon area interrupted. Extension of the sound fence to the above-defined lines of sight would also be effective running the length of the riparian corridor adjacent to the proposed Skate Park site.

Based on a review of the existing topography of the site and proposed elevations of the project, it appears that the sound fence will be effective in blocking most of the visual contact between Skate Park users and the adjacent riparian area. As identified above, the sound fence runs the entire length of the riparian corridor adjacent to the proposed site. The proposed project sites northern border at the riparian corridor slopes steeply down to the lower terrace of Neary Lagoon (See Exhibit M for adjacent topography map). The effective of the slope is that it visually exposes only those trees within the top portion of the slope. Some tall trees at this location would be visible above the sound fence. In addition, the effectiveness of the visual blockage of the sound fence will be enhanced by the (-) 4.5 below grade elevation of the Skate Park, and also the adjoining native evergreen trees and shrubs within the ten-foot buffer zone adjacent to the sound fence required under condition of approval No. 20. Furthermore, this condition requires that a revegetation plan be prepared and monitored for the buffer zone and that installed plants be as mature as possible.

### *1.5 Analysis and Conclusion on Upper Terrace*

Based upon the acoustical analysis and evidence presented in the technical memorandums by *Wilson, Ihrig & Associates, Inc.* the proposed Skate Park will not impact bird species inhabiting the adjacent riparian corridor. The December 3, 1999 memorandum illustrates that existing noise levels are above that which is predicted to originate from the Skate Park. Again, the December 14, 1999 further clarifies this issue by stating that, “the new noise source, i.e. the skate park, introduced into this environment will be masked by the ambient noise such that skate activity will not affect the existing noise levels.” Therefore, the Commission finds that the appeal does not raise a substantial issue in terms of noise impact to bird species because the Skate Park will not increase noise levels within adjacent riparian corridor.

Because the sound fence will be effective in visually blocking views to the majority of the trees within the adjacent riparian corridor their will not be a significant impact to bird species inhabiting the adjacent riparian corridor. In addition, as stated in the correspondence by the City’s biological consultant, Bryan M. Mori, dated December 8, 1999, those “birds that do utilize the trees along the edge of the plateau are primarily common urban species, which are continually subjected to a variety of urban noises.” Therefore, in light of this evidence, the Commission finds that appeal does not raise a substantial issue in terms of visual impacts to bird species inhabiting the adjacent riparian corridor.

### *2. Lower Terrace*

As mentioned above, the appellant has also made the assertion that the construction of the Skate Park will increase the amount of adverse impacts to wildlife inhabiting the lower terrace of Neary Lagoon. This would occur as skater’s travel from the lagoon’s two lower terrace access points of Blackburn or Chestnut Streets to the Skate Park by skate board, roller skate, or roller blade through

the various natural habitats of the lagoon. These adverse impacts would be accomplished through both increased incidents of contact and accompanying noise levels in the lagoon's lower terrace.

### *2.1 Existing Conditions*

Providing access throughout Neary Lagoon is a clear priority of the management plan. This is further emphasized through the lagoon's potential to provide unique opportunities for people to experience a diverse natural area in an urban environment. However, the plan stresses the need for controlled access that is pedestrian oriented and that which will minimize impacts on wildlife and the overall character of the area for visitors. This is clearly illustrated through management plan policies WF-7, PU-3, 3.2, 4, 4.3 summarized above.

Within the lower terrace of Neary Lagoon there are various pathways, some of which are possible to ride a skateboard across. These pathways traverse directly through or adjacent to some of the open water, freshwater marsh, riparian and oak woodland habitats of the lagoon. As mentioned above, these habitats comprise approximately 75% of the lagoon. In terms of bird species that have the potential for being impacted, there are a number of special status birds that have been observed at Neary Lagoon. These species types include waterbirds, raptors, and passerine birds. The only special status bird species with which Neary Lagoon provides suitable nesting and foraging habitat are the great blue heron, great egret, and black-crowned night heron. Currently, these species are not known to nest at the lagoon. Overall though, according to the Neary Lagoon Management Plan 66 species of birds were observed during the 1986 surveys, with 50 occurring in the riparian forest, 27 in the freshwater march, and 14 in the open water habitats. Other wildlife species inhabiting the lower terrace of the lagoon include amphibians, reptiles, and fish.

As mentioned, there are various pathways within the lower terrace of Neary Lagoon. The surfacing of these pathways can be separated into three different types: decomposed granite, asphalt-concrete, and wooden boardwalks. The ability to travel over these surfaces by skateboard is directly related to the relative roughness or construction type of the surface. The decomposed granite pathway, which starts at Neary Lagoon's Chestnut Street entrance and ends at the small boardwalk adjacent to the wastewater treatment plant, is not possible to skateboard on. This is due to it's rough, non-compacted surfacing. Pathways constructed of asphalt-concrete traversing the southern portion of the lagoon are most the permissible to skateboarding. Travel by skateboard over the asphalt-concrete pathways is easiest due to their flat hard surface. The wooden boardwalks traversing the open water areas and grassland, although not the most desirable to skateboard across, are nonetheless permissible to a certain extent at facilitating skateboard travel. The horizontal wooden planks that constitute the surfacing of the boardwalks contain small gaps between one another, which makes for a non-continuous flat surface. In this case, the small gaps between planks can impede travel by skateboarders. However, in spite of each of the above surfaces potential for facilitating skateboarding, the use skateboarding, is currently and with the proposed project, would continue to be prohibited on all pathways throughout Neary Lagoon.

Pedestrian use is currently allowed by the management plan on all pathways within Neary Lagoon. According to the City's correspondence of November 23, 1999, "Bicycling is prohibited on all boardwalks. Bicycling is allowed on the decomposed granite and asphalt pathways connecting the Chestnut Street entrance to the California Street entrance."

In terms of public use impacts upon bird species within the lower terrace of Neary Lagoon, a substantial increase in traffic, particularly by skateboards, could have negative affects upon the wildlife species inhabiting Neary Lagoon. Preventing and reducing this impact upon all wildlife species of Neary Lagoon is clearly the intent of Neary Lagoon Management policies WF-7, PU-3, PU-3.2, PU-4, and PU-4.3 stated above.

## *2.2 Project Impacts within Lower Terrace*

The Neary Lagoon Management Plan approved by the Commission provides guidance on the estimated numbers of park users during 1991. Table 2-7 (p.47) of the management plan estimates the number of floating walkway users on a monthly basis (See Exhibit F for table 2-7). At the most peak use on the floating boardwalks is 340/month, or approximately 11 users per day. Observation of actual boardwalk use by Commission staff during site visits suggests that this figure may be low. In any event, this is the only baseline estimate of the number of pathway users in the lower terrace, which have been taken to date.

The FEIR estimates that during peak season, which is expected to occur on summer weekends, 500 Skate Park users per day are expected, or approximately 15,000 skaters per month. It is estimated that 200 of the 500 users per day during peak season would arrive by foot, bicycle or bus, with the remainder arriving by car. For low season, the estimated number of visitors per day is approximately 200 users, or about 6,000 per month. In terms of this issue presented in the appeal it is the amount of increase in travel from or to Chestnut or Blackburn Streets through Neary Lagoon's lower terrace that is of concern. In particular the appeal addresses the issue of skateboarding on the pathways and boardwalks. There are no specific estimates in the FEIR addressing expected travel through Neary Lagoon's lower terrace. However, the FEIR states in section 3.9.4 "Effects to Wetland Habitat" that,

*"The increase in the number of park users, however, would likely result in an increase in traffic on the boardwalk and walkways around the lagoon. This in turn is likely to increase the use of bicycles and skateboards on the boardwalks and walkways which occurs occasionally despite sign prohibiting their use. These disturbances could reduce the use of the lagoon by some waterbirds, such as night herons and diving ducks. The Operations and Enforcement Plan for the Skate Park would call for prohibition on the use of skateboard and bicycles on walkways within the park. This measure must be strictly enforced to be effective."*

Although the FEIR found this impact to be less than significant, mitigation measure K states, "design the boardwalks and walkways to impede the use of bicycles and skateboards, provide for more consistent monitoring by City personnel, and consider temporary closure of the Skate Park facility if continued violations occur," This is incorporated in the City permit approval as condition No. 23. In light of the ambiguity of the condition's language in when and by what means the mitigation was to take place Commission staff requested that the City further clarify the intent of this condition. The City's response to this request in a letter dated November 23, 1999 states that, "the existing boardwalk sections would not be re-designed as part of the Skate Park project

construction. If repeated violations occurred despite enforcement efforts and Skate Park closures, the City would consider additional physical deterrent measures. These could include wider spacing of decking boards to provide a more resistant surface. And installation of barriers at the boardwalk entrances. Any physical measures would comply with ADA standards” (see Exhibit N for text of City’s 11/23/99 letter).

In addition, the City’s correspondence of November 23, 1999 addresses the issue of skateboarding throughout the pathways in Near Lagoon. The letter states in part, “the Skate Park is not expected to result in a significant increase in skateboarding, skating or bicycle violations for the following reasons:

- The existing boardwalk design and decomposed granite pathways have historically served as a deterrent to skateboarding and skating.
- For users arriving by skateboard, skates or bicycles, accessing the Skate Park through the lagoon area is not the most direct route for most City residents. The only exception would be those residents in the immediate vicinity of the Blackburn and Chestnut Street entrances. Bicycle access from Chestnut Street entrance is allowed.
- Skateboarders and skaters typically select routes that allow continuous skating or skateboarding on smooth surfaces rather than choosing routes with rough or unskateable surfaces which require multiple dismounts.
- Users arriving by vehicle or bus would not access the Skate Park through the lagoon area. They would utilize the Bay and California Street entrance.”

The City’s letter dated November 23, 1999, further addresses this issue by stating that, “the boardwalks and pathways were specifically designed to be resistant to skateboarding while conforming to ADA (American Disability Act) standards. The boardwalk planks were constructed in a horizontal pattern with 1/8” spacing between planks to discourage skate boarding and skating.” However, according to limited instances of Commission staff’s observations and public reporting to the City Parks and Recreation Department since the appeal, skateboarding on the asphalt and wooden boardwalks has occurred to an undetermined extent in the past, though in violation of park rules and proscriptive signage.

Other mitigation measures to be used in the remainder of the Neary Lagoon include the continued prohibition of skateboarding outside of the Skate Park facility, monitoring by Parks and Recreation Department staff, creation of a volunteer skate patrol, and a violation monitoring program. As mentioned previously, additional measures that may be used by the City include citations for violator’s, and possible temporary closure of the facility if violations become excessive or cannot be controlled.

Lastly, condition of approval No. 31 requires the City to, “monitor the impact on bird populations adjacent to the Skate Park, expand the contract with consulting biologists to include new transects for bird observations around the bay, creek and bluff, and to prepare a separate annual report, for a three year period, on this area.”



### *2.3 Analysis and Conclusion on Lower Terrace*

Although the figures estimating public use of the lower terrace do not provide a clear indication of the numbers of historic use or the potential increase in travel along the pathways and boardwalks of the lower terrace there is indirect evidence indicating that there will not be a *significant* increase. The FEIR concludes that there will likely be an increase in the use of the boardwalk and pathways with construction of the Skate Park. Estimates of the FEIR indicate that that 200 of the 500 Skate Park users per day during peak season would arrive by foot, bicycle or bus, with the remainder arriving by car. An undetermined proportion of the users not arriving by car could potentially gain access to the Skate Park through the pathways and boardwalks of Neary Lagoon. Given the estimates of the FEIR, there could be an increase over the historic estimates of 11 users per day of the boardwalks. However, the estimates of historic use of the boardwalks do not include use of the other pathways within the lower lagoon. Therefore, it is reasonable to assume that over all path use in the lower lagoon exceeds previous estimates of boardwalk use. Additionally, access through the Blackburn and Chestnut Street entrances does not provide the most direct route to the Skate Park for most City residents, while the paths from these locations are not easily conducive to skateboard travel. In any event, in light of the absence of figures which might illustrate the estimated increases of both pathway and boardwalk use which might occur with the Skate Park's construction, the project has been conditioned to address skateboarding within the lower terrace of Neary Lagoon.

The proposed project includes appropriate mitigation measures to address any significant increases in skateboard travel through the pathways and boardwalks of the lower lagoon, should they occur. These measures include the continued prohibition of skateboarding outside of the Skate Park facility, monitoring by Parks and Recreation Department staff, creation of a volunteer skate patrol, and a violation monitoring program. As mentioned previously, additional measures that may be used by the City include citations for violator's, and possible temporary closure of the facility if violations become excessive or cannot be controlled. Furthermore, if violations become excessive the City could modify the existing boardwalks to impede travel by skateboards while still allowing pedestrian access that conforms to ADA standards. The additional monitoring of bird populations within the lagoon, as required under condition of approval No. 31, will provide additional evidence of any impacts resulting from increased travel through the lower terrace of the Neary Lagoon should it occur. Therefore, because the proposed project is not expected to result in a significant increase in skateboard travel through the lower terrace, and has been conditioned to monitor for such and includes measures that adequately address significant increases, should they occur, the Commission finds that the proposed project does not raise a substantial issue in terms of impacts to wildlife species inhabiting Neary Lagoon's lower terrace.

### **C. INCOMPATIBLE USE**

The appellant has made the contention that the proposed Skate Park would allow a designated incompatible use. More specifically, that the Neary Lagoon Management Plan prohibits the activity of skateboarding throughout the entire management area.

Neary Lagoon Management Plan Policies, Objective PU-4 and Action PU-4.2 state:

*“Objective PU-4: Establish, enforce, and explain reasons for restrictions on public access and activities to increase understanding and reduce impacts on wildlife and people.*

*Action PU-4.1: Activities prohibited throughout the management area will include roller-skating, skateboarding, littering, damaging vegetation, fishing, walking dogs, harassing wildlife, entering important wildlife areas except by trail or with permission of the City, camping, and other activities prohibited by laws and ordinances...”*

The first policy sets the framework for the second “action” policy. Together their intent and purpose is to reduce impacts from various public access activities upon wildlife and people, prohibit activities that would cause such conflict, and provide the public with information explaining reasons for such activities exclusion from the lagoon.

The City has provided indirect interpretation of Neary Lagoon Management Plan policy Action PU-4.1 in the form of a response to staff’s comments on the Draft EIR, dated June 15, 1999, for the proposed project. In summary, the City’s response states that since management zone J is designated for active recreation and the vicinity has historically be used for such, allowing skate boarding within this zone at the proposed site is consistent with the Management Plan.

Approval of the proposed project would effectively authorize skateboarding only within the proposed footprint of the project site. Prohibition of skateboarding throughout the remainder of Neary Lagoon will remain in effect. In addition, the use of skateboarding would be physically contained at the proposed site by fencing and landscaping enclosing the facility, and the replacement of concrete surrounding the project site with a non-skateable surface in order to further contain the proposed skating area.

Strictly read, the proposed project is inconsistent with Neary Lagoon Management Plan Policies, Objective PU-4 and Action PU-4.2. However, this inconsistency does not raise a substantial issue because the proposed project allows skateboarding only within the building footprint and includes measures that will address the intent and meaning of the policy. This is accomplished through the conditions of the proposed project, which physically contain the use of skateboarding to the Skate Park and also by the continued prohibition of skateboarding throughout the remainder of Neary Lagoon.

Therefore, because the project has been conditioned to address all substantive inconsistencies between the language of Neary Lagoon Management Plan Policies, Objective PU-4 and Action PU-4.2, the Commission finds that the appeal does not raise a substantial issue in terms of allowing a designated incompatible use.

#### **D. USER GROUP CONFLICTS**

The appellant has made the contention that the proposed Skate Park project will result in conflicts between different user groups of the Neary Lagoon. More specifically the appellant contends that conflicts will arise between skateboarders and persons who are disabled and also children playing in the adjacent “tot lot.” The assertion is that this could occur as skate boarders travel

through the paths in the lower lagoon to the project site and particularly on the narrow handicapped accessible ramp to the southeast. In addition, the appellant alleges that the construction of the Skate Park will preclude the use of the site as wildlife habitat and environmental education.

Coastal Act Section 30210 provides that:

*In carrying out the standards of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

In addition to Coastal Act Section 30210, the Neary Lagoon Management Plan contains policies that address public access and safety in general. In summary, these policies call for improved high quality, and safe public access, recreation, and environmental education opportunities that are consistent with other purposes of the management area. As discussed, additional policies in the management plan prohibit the use of skateboarding and roller-skating throughout the management area and allow bicycle use only on the upper terrace.

### *1.1 Existing Pathways*

As discussed, Neary Lagoon has various pathways, some of which are possible to ride a skateboard across. The decomposed granite pathway, which starts at lagoon's Chestnut Street entrance and ends at the small boardwalk adjacent to the wastewater treatment plant, is not possible to skateboard on. Pathways constructed of asphalt-concrete traversing the southern portion of the lagoon are most accessible to skateboard on. There is currently a long, narrow concrete ramp connecting the upper terrace of the Neary Lagoon with the lower that provides access to disabled persons. The wooden boardwalks traversing the open water areas, although not the most desirable to skateboard across, are nonetheless permissible to a certain extent at facilitating skateboard travel.

### *1.2 Project Mitigation*

First, Condition of approval No. 27 states, "replace concrete pathways in the vicinity of the Skate Park and the children's play with non-skateable surfacing." This surfacing will still permit access by persons who are disabled or use wheel chairs. This measure will most likely effectively eliminate the potential for user group conflicts within the immediate vicinity of the project site.

Second, in addition to conflicts within the immediate vicinity of the proposed Skate Park facility the appellant contends that conflicts will also occur on the long wheel chair ramp. The potential safety concerns are exacerbated by the fact that this path segment is confined and narrow. Since there was no mitigation measure or condition of approval specifically addressing the wheel chair ramp, Commission staff asked the City for clarification and intent on this issue. This was clarified in the form of correspondence from the City, dated November 24, 1999, which states, "the wheel chair accessible ramp connecting the upper bluff to the lower lagoon area would also be

redesigned (completed as part of the Skate Park construction) with non-skateable surfacing to impede skateboarding and skating.”

Third, as stated above it is currently possible to skate on the asphalt-concrete pathways, as well as the boardwalks in the lower terrace area of Neary Lagoon, though in violation of the park rules. Condition of approval No. 13 requires the City to install signs in the vicinity of the Skate Park facility stating that no skating is allowed on the pathways throughout Neary Lagoon. In addition, the Operations and Enforcement Plan provides for monitoring and enforcement of violations. Furthermore, Condition of approval No. 23 addresses skating on the boardwalks and walkways in the lagoons lower terrace and as mentioned above was clarified in the form of correspondence from the City in a letter dated November 23, 1999. Once more, the letter states, “if repeated violations occurred despite enforcement efforts and Skate Park closures, the City would consider additional physical deterrent measures. These could include wider spacing of decking boards to provide a more resistant surface. And installation of barriers at the boardwalk entrances. Any physical measures would comply with ADA standards.” In terms of the asphalt-concrete pathways in the lower lagoon area no physical design measures have been identified to address conflicts beyond monitoring and enforcement efforts.

### *1.3 User Group Analysis and Conclusion*

In terms of user group conflicts within the immediate vicinity of the project site the project includes appropriate mitigation to eliminate potential conflicts at this location. This is accomplished through condition of approval No. 27 requiring replacement of concrete pathways in the vicinity of the Skate Park with non-skateable surfacing. In addition, the City’s intent to replace the wheel chair ramp’s surface with a non-skateable surface is also an effective mitigation measure that will eliminate potential conflicts.

In regards to the asphalt-concrete pathways and boardwalks, there is inconclusive evidence indicating that there will be a substantial increase in the amount of traffic along the pathways in the lower terrace that will contribute to conflicts between user groups of Neary Lagoon. In the past there have been an undetermined number of violations of the park rules that have contributed towards conflicts between user groups. Clearly, some users of the park will continue to violate the park rules. Although the FEIR concludes that there will likely be an increase in traffic in the lower terrace it does not indicate what level or amount of increase would occur. In any event, project mitigation measures include the monitoring of violations, citations for violators, possible temporary closure of the Skate Park in the event of excessive violations, and also the consideration of physical design features to block skateboard travel if all other measures fail. At this time the previously stated mitigation measures most appropriately address the issue of user group conflicts. Therefore, for the reasons stated above, the Commission finds that the appeal does not raise a substantial issue in regards to conflicts between user groups of Neary Lagoon.

### *1.4 Use of Site for Wildlife Habitat and Environmental Education*

As mentioned above, the appellant alleges the proposed Skate Park would preclude the use of the site for wildlife habitat and environmental education. The site of the proposed Skate Park currently provides little, if any wildlife habitat values. The site is currently graded and devoid of vegetation.

Furthermore, the management plan designates use of the site for active recreation and not specifically for wildlife habitat. Therefore, the Commission finds that there are no grounds upon which to base an allegation that the site would remove wildlife habitat since current and previous use of the site was for no such purpose.

## **E. AESTHETICS**

The appellant has made the contention that the proposed Skate Park will have negative affects on the aesthetic values of Neary Lagoon. The allegation is centered upon the criterion that the Skate Park facility would serve as a visual detraction from the natural environment of the lagoon.

Currently the proposed project site is graded and devoid of vegetation. Amendment of the Neary Lagoon Park Master Plan changed the previously designated use for the project site for two and one-half tennis courts to that of a Skate Park. A line of tall vegetation at the adjacent riparian corridor screens public views of the site from the lower lagoon area. Accordingly, this line of vegetation also blocks important views and visual features of the lagoon environment below. Furthermore, the proposed Skate Park is located outside of areas of Neary Lagoon that could be termed as part of the natural environment. A majority of the skateboard facility will be below or at grade and landscaping will enclose the skating area. In addition, the proposed project site is located immediately adjacent to the City's secondary wastewater treatment facility. The wastewater treatment facility has an extremely prominent presence throughout much of the southern border of Neary Lagoon (See Exhibit D for project location map). Buildings and developed structures at the treatment facility consist mostly of very large bulky structures.

Appropriate LCP and Neary Lagoon Management Plan policies that address the preservation of visual resources or guide aesthetic management include the following:

*Neary Lagoon Management Plan goal (A) states:*

*"Maintain important views and visual features of the management area and enhance viewing opportunities."*

*Neary Lagoon Management Plan objective (A-5) provides that:*

*"Design new recreation, interpretive, and other facilities to blend with the natural aesthetic character of the lagoon environment."*

In respect to management plan goal (A), the proposed project will not block any important views or visual features of the greater lagoon environs. As mentioned above, a tall line of vegetation at the adjacent riparian corridor screens public views of the site from the lower lagoon area and also blocks important views and visual features of the lagoon environment below from the project site. Furthermore, the project site is located outside of areas of the lagoon which have been identified as having "high visual quality" (See figure 2-7 of the Neary Lagoon Management Plan, which illustrates important visual resources of the lagoon (Exhibit O)). Furthermore, Commission staff's site visits have corroborated the accuracy of figure 2-7 of the management plan. Consequently, the

Commission hereby finds that the proposed project will not block important views or visual features of Neary Lagoon.

In regards to Plan objective (A-5), the proposed project blends with the natural environment to the greatest extent feasible. Previously designated use for the project site was for two and one-half tennis courts. The visual effect of the change in use of the site is to substitute a flat concrete surface with one that is irregular in elevation, but below grade. Furthermore, the proposed project includes landscaping which encloses all skating areas of the park. The effect of the proposed landscaping will facilitate the blending of the development with the natural aesthetic character of the lagoon's natural environs to the greatest extent feasible. In addition, taking into account the adjacent wastewater treatment facility, the proposed Skate Park is arguably compatible with surrounding structural development in terms of height and scale. Lastly, as mentioned above, the project site is located outside areas of Neary Lagoon that could be considered part of the natural lagoon environment. Therefore, for the reasons stated above, the Commission hereby finds that the proposed Skate Park would not impinge upon the natural aesthetic character of the lagoon environment.

In light of those reasons stated above, the Commission thereby concludes that in terms of aesthetic values, the use of the site as a Skate Park does not raise a substantial issue in regards to it's effect upon important views or visual features, nor would it have an adverse aesthetic impact on the natural environment of Neary Lagoon.

#### **4. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures that would substantially lessen any significant adverse effect that the project may have on the environment.

As detailed in the findings of this staff report, the Commission has not identified any substantial adverse environmental impacts of the project that were not effectively addressed by the certified EIR for the project. Accordingly, the Commission finds that as conditioned and approved by the City of Santa Cruz, the proposed project will not have any significant adverse impacts on the environment within the meaning of CEQA.